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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,052	02/19/2004	Bruce J. Wells	040135-000100US	6841
20350	7590	10/11/2006	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			ARAQUE JR, GERARDO	
		ART UNIT	PAPER NUMBER	3629

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/784,052	WELLS, BRUCE J.
	Examiner Gerardo Araque Jr.	Art Unit 3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 21 July 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 10-38 and 53-58 is/are pending in the application.
 - 4a) Of the above claim(s) 1-9 and 39-52 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 10-38 and 53-58 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 19 February 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/23/2005</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Election/Restrictions

1. **Claims 1 – 9 and 39 – 52** are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Election was made **without traverse** in the reply filed on July 21, 2006.

Specification

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Objections

3. **Claims 10 – 20 and 35 – 38** are objected to because of the following informalities: Throughout the claims the applicant consistently switches between the terms "transportable fluid container" and "fluid container." For the purposes of this examination the examiner will assume that the applicant is referring to the same container, but requests for the applicant to remain consistent when using these terms, i.e. either us only "transportable fluid container" or "fluid container." Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. **Claims 10 – 38 and 53 – 58** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. In regards to **claims 10, 21, and 35**, the applicant is only claiming to allow the user to dispense the industrial fluid. However, as it is currently disclosed the method of allowing a user to dispense the industrial fluid fails to be positively recited.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claims 10 – 38 and 53 – 58** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Benson (US Patent 5,494,191)** in view of **Titus (US Patent 5,636,653)**.

9. In regards to **claim 10 and 53**, Benson discloses a relationship between a fluid supplier and a user, a method of distributing an industrial fluid, the method comprising:

providing at the user's location a transportable fluid container (**Benson Column 3 Line 58**) having contained therein an industrial fluid, wherein the transportable fluid container and the industrial fluid contained therein are owned by the fluid supplier;

allowing the user to dispense an amount of industrial fluid from the transportable fluid container (**Benson Column 3 Lines 58 – 59**);

However, Benson fails to explicitly show determining the amount of industrial fluid dispensed and accounting for the industrial fluid dispensed from the transportable container.

Titus on the other hand discloses a relationship between a fluid supplier and a user that determines the amount of industrial fluid dispensed (**Titus Column 3 Lines 28 – 31**) and accounting for the industrial fluid dispensed (**Titus Column 3 Lines 52 – 58**) so that the supplier can properly account for and assess the amount of fluid being dispensed from the transportable container so that the amount of fuel left will be maintained at a nominal amount (**Titus Column 15 Lines 21 – 25**).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Benson in view of the teachings of Titus to include a fluid monitoring system in order for the user and supplier to know the amount of fluid that has been dispensed.

10. In regards to **claim 11**, it is an old and well-known business practice for a fluid supplier to transport a transportable container to the user's location while the transportable container has contained therein the industrial fluid. For example, it would be in the best interest of the supplier to have the user to return the empty containers in order for the supplier to avoid spending money on new containers. As a result, the supplier must supply the user with another container having therein the industrial fluid, in which the container would be a previously used container or a new container.

11. In regards to **claim 12 – 14 and 24**, Benson discloses that the transportable container can be used for other types of fluids (**Column 4 Lines 29 – 30**).

12. In regard to **claims 15 – 16, 22 – 23, and 58**, it is an old and well-known business practice to transfer the ownership of the dispensed industrial fluid from the supplier to the user. An example would be at a gasoline station in which the consumer would be the owner of the dispensed gasoline, which was previously owned by the gasoline station. Once the gasoline has been dispensed it is old and well known that the consumer must then pay for the dispensed gasoline.

13. In regards to **claim 17**, Titus discloses communicating to the fluid supplier information about the industrial fluid dispensed from the transportable container (**Column 9 Lines 20 – 23**).

14. In regard to **claims 18 and 25**, it is inherently included that if a container has a given volume in which a fluid is contained therein it would obvious to know how much fluid is remaining if a given amount of fluid has been dispensed.

15. In regard to **claims 19 and 26**, Titus discloses that if the amount of industrial fluid remaining in the container is less than a threshold value, recording an order for additional industrial fluid (**Column 15 Lines 21 – 25**).

16. In regards to **claim 20**, it would have been obvious that if a relationship exists between a supplier and user then once the supplier has detected that the amount of fluid has fallen below a predetermined threshold, the supplier would then supply the user with another container having contained therein-additional industrial fluid.

17. In regards to **claim 21**, Benson discloses a relationship between a fluid supplier and a user, a method and computer software for distributing an industrial fluid, the method comprising:

providing at the user's location a fluid distribution station configured to be coupled with at least one fluid container (**Benson Column 3 Line 58 – 59**) having contained therein an industrial fluid, wherein the transportable fluid container and the industrial fluid contained therein are owned by the fluid supplier;

allowing the user to dispense an amount of industrial fluid from the transportable fluid container (**Benson Column 3 Lines 58 – 59**);

However, Benson fails to explicitly show determining the amount of industrial fluid dispensed and accounting for the industrial fluid dispensed from the transportable container.

Titus on the other hand discloses a relationship between a fluid supplier and a user that determines the amount of industrial fluid dispensed (**Titus Column 3 Lines 28 – 31**) and accounting for the industrial fluid dispensed (**Titus Column 352 – 58**) so that the supplier can properly account for and assess the amount of fluid being dispensed from the transportable container so that the amount of fuel left will be maintained at a nominal amount (**Titus Column 15 Lines 22 – 25**).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Benson in view of the teachings of Titus to include a fluid monitoring system in order for the user and supplier to know the amount of fluid that has been dispensed.

18. In regards to **claim 27**, it would be obvious that if the supplier is the owner of the distribution station that has bee provided to the user then it would infer that the user is renting/leasing the distribution station from the supplier.

19. In regards to **claim 28**, Benson discloses that the fluid distribution station is mobile (**Column 3 Lines 58 – 59**).

20. In regards to **claim 29**, it is old and well known to have a means of locomotion for a distribution station for those distribution stations that contain large containers containing a large quantity of a particular fluid.

21. In regards to **claim 30**, Titus discloses providing a control terminal in communication with the fluid distribution station, the control terminal being configured to receive data from the fluid distribution station about the fluid dispensed from the fluid container (**inherently included in order to properly communicate fluid usage Column 9 Lines 20 – 23**).

22. In regard to **claims 31 and 54 – 55**, Titus discloses communicating to the fluid supplier information about the fluid dispensed from the fluid container comprises:

transmitting from the fluid distribution station data about the fluid dispensed from the fluid container (**Column 9 Lines 20 – 23**) ;

receiving at the control terminal the data about the fluid dispensed from the fluid container (**inherently included in order to properly communicate fluid usage Column 9 Lines 20 – 23**); and

transmitting from the control terminal to the fluid supplier the data about the fluid dispensed from the fluid container(**Column 15 Lines 22 – 25**).

23. In regards to **claim 32**, Titus discloses transmitting from the control terminal an authorization to dispense fluid from the fluid container (**Column 15 Lines 20 – 21**).
24. In regards to **claim 33**, Titus discloses the authorization to dispense fluid from the fluid container specifies an amount of fluid to be dispensed (**Column 15 Lines 20 – 21 which would obviously specify an amount to be dispensed**).
25. In regards to **claim 34**, Titus discloses transmitting from the fluid distribution station a request for an authorization to dispense fluid from the fluid container (**Column 15 Lines 14 – 21**).
26. In regards to **claim 35**, Benson discloses a relationship between a fluid supplier and a user, a method of distributing an industrial fluid, the method comprising:
 - providing at the user's location a fluid distribution station configured to be coupled with at least one fluid container (**Benson Column 3 Line 58 – 59**) having contained therein an industrial fluid, wherein the transportable fluid container and the industrial fluid contained therein are owned by the fluid supplier;
 - allowing the user to dispense an amount of industrial fluid from the transportable fluid container (**Benson Column 3 Lines 58 – 59**);However, Benson fails to explicitly show determining the amount of industrial fluid dispensed and accounting for the industrial fluid dispensed from the transportable container.
Titus on the other hand discloses a relationship between a fluid supplier and a user that determines the amount of industrial fluid dispensed (**Titus Column 3 Lines 28**

– 31) and accounting for the industrial fluid dispensed (**Titus Column 3 Lines 52 – 58**) so that the supplier can properly account for and assess the amount of fluid being dispensed from the transportable container so that the amount of fuel left will be maintained at a nominal amount (**Titus Column 9 Lines 20 – 23; Column 15 Lines 22 – 25**).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Benson in view of the teachings of Titus to include a fluid monitoring system in order for the user and supplier to know the amount of fluid that has been dispensed.

27. In regards to **claim 36**, Benson discloses a second container with the fluid distribution station and pressurizing the second container with a gas (**Column 4 Lines 22 – 26**).

28. In regards to **claim 37**, Benson discloses dispensing the gas from the second container (**Column 4 Lines 22 – 26**).

29. In regards to **claim 38**, Benson discloses wherein the gas serves as a source of pressure for dispensing the industrial fluid (**Column 4 Lines 22 – 26**).

30. In regards to **claim 56**, as already discussed above, the distribution station, which is located at the user's facilities, would inherently include the control terminal to be located at the facility.

31. In regards to **claim 57**, a server is inherently included in order to properly relay any messages to the suppliers.

Conclusion

32. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure located on PTO-892 Notice of References Cited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerardo Araque Jr. whose telephone number is (571)272-3747. The examiner can normally be reached on Monday - Friday 8:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GA
9/28/06


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